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PRACTICAL WORKING AND RESULTS

OF THE

INTER-STATE COMMERCE ACT

BY

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THE

PRACTICAL WORKING AND RESULTS

OF THE

INTER-STATE COMMERCE ACT.

ORIGIN OF THE ACT.

THE Inter-State Commerce Act was made a law by the Congress of the United States for the purpose of reaching and correcting certain evils which had grown out of the methods and the charges made for the transportation of freight and passengers between the States, known as inter-state commerce.

The very rapid development of the grain-producing States, west of Chicago, in population and production, was made possible by the increase and fertility of the public lands opened for settlement, by their cheapness, by a large foreign immigration furnishing labor and some capital, by the construction of railways, by the enlargement of the Erie Canal, and by the increased capacity and speed of the carrying vessels on the Lakes. As a result, more land was put on the market than was required by the wants of the people, and more railways and vessels were built than could be made profitable in the transportation of passengers and freight. Speculation in land, in town sites, and in constructing railways was an influential element in this development. The greatest increase in the number of acres of land opened for settlement and in immigration happened at a time when the products of the soil, wheat, corn, oats, etc., were bringing abnormally high prices, leaving to the producer a large profit. As a result, lands were freely bought, people rushed into the new countries, and many railroads were built. The collapse of prices

brought the people into financial difficulties, and to the railway companies, in most cases, financial disaster. But the railways were built; settlers occupied the public lands; and the villages, towns, and cities were crowded with people searching for something to do. A prime question with the railway managers was to secure sufficient freight and passengers to make their roads profitable, or even to meet expenses, while the total amount of the tonnage and passenger travel was not more than enough for any two of the lines connecting with the chief Eastern cities; yet from five to ten lines of railway were each seeking for the lion's share of the traffic. Such a state of things naturally led to the adoption of all manner of contrivances to secure freight, by rebates, by undercutting in prices, by less recorded weight, deduction of terminal charges, free passes, etc. etc. Agreements were made between the companies as to rates to be broken; they were used as a snare by the weaker to gain an advantage over the stronger companies, and as a result, the trade in the products of the West became so demoralized by the uncertainty of the railway charges that there arose a necessity, felt by the people and by the stronger railway companies, that something should be done to correct the evils, and protect the producers, the traders, the consumers, and the owners of the transportation companies.

It was thought that no State authority was sufficient to solve the problem, and that the General Government alone had the power and could overcome the difficulties, under the clause of the Constitution placing on Congress the duty of protecting commerce between the States. It was true, and it was so acknowledged, that when this clause of the Constitution was adopted, it had no reference to such a question as that to which it was now to be applied, but it was urged, on perhaps stronger ground, that, as a national duty, Congress should protect the people from injustice in their inter-state dealings, where the power of the State or States was insufficient.

CHARACTER OF THE ACT.

These influences, resulted in the "Inter-state Commerce Act" being passed and approved by the President.

Much good would have resulted to the country if a law could have been passed which would have been confined or limited to correcting the specific evils that had been produced by the peculiar circumstances already stated, which would have recognized the laws of trade and made binding all agreements as to traffic and interchange of business between the transportation companies, and which would have provided for the protection of the property of the transportation companies by the General Government. Producers, manufacturers, miners, business men, and capitalists would then have understood their position; in lieu of which an Act was passed which, it is claimed, practically places the property and management of all the railways in the nation under the control of five commissioners appointed by the President. This assumption is based on the power given to the commissioners to regulate inter-state commerce, and, as a necessary sequence, the administration of this power and authority involves everything that affects such commerce, including the management and all the details of operating railways, carrying, or that are liable to carry, any amount of freight or number of passengers between the States. Further, as each railway company thus made liable in the law to the control of the Commission, carries, under its charter, persons and property within the limits of the State which gave it being, and is liable to the State laws and answerable to the State courts for the performance of its duties, a conflict of authority would be created by the Inter-state Commerce Commission directly interfering with the performance of the duty of the railway company to the State. In the power given to the Commission to regulate the rates of traffic on inter-state commerce is involved the power to so affect the revenues and resources of a railway company that it cannot give the citizens of the State, to which it owes its existence, the facilities in transporting their persons and property to which they are entitled, nor at as low rates as they would otherwise be charged. In the ruling that railways connecting at State lines are continuing lines, and that their rates are under the control of the Commission,—the authority of the State is superseded, and the contract between the State and corporation is impaired. No railway corporation can serve two masters. This power to control every transportation company in all the States has been clearly

indicated in the reports of the Commission; that it has not been exercised has been due to the prudence of the members of that body.

The report of the Commission for the year 1890 acknowledges the impracticability of the provisions of the Act, by their insisting that the proofs and evidence in a case that may be laid before a Court of Appeal shall be submitted by them. Such a recommendation shows that they feel themselves powerless to carry out the law with justice to all; this is due to its unwarranted assumptions of power, its false reasoning involving wrong principles, the impossibility of devising rules and establishing precedents which shall embrace the great carrying interests of this country. These defects involve the Commission in contradictory decisions, in the evasion of the true point of an appeal, or in an effort to harmonize the letter of the law with justice.

That such is the result of their experience is not a matter of astonishment to any one conversant with the questions arising in the carrying trade of this country, and which, with the yearly increase of business, will become more difficult. If Congress should pass the law asked for by the Commission, the result would be that the Commission would have the power so to formulate evidence as practically to lessen the value of an appeal to a United States Court.

When the capital involved in furnishing the transporting interests of this country is considered; when their value to the nation and the people is reckoned up; when the numbers of population and the value of property that should be attributed to the possible future of the nation are admitted as an element, and the injury resulting from bad or unkind legislation in keeping back the development of the country is also put into the question, then the arithmetical value of these interests and of those dependent on them would reach figures that would make any statesman hesitate before he would hazard his country's welfare by placing the control of these interests in the power of any five men, however pure or honest or in ordinary questions intelligent, but who have not been trained in the lines on which they are to act as judges, and more especially for the true reason involved in the Commissioners' recommendation, that an unwise law cannot be

effectively carried out unless such power is granted the Commission. There would certainly be greater wisdom in revising the act, striking out all that has been found to be unwise and impracticable, all that is contrary to common business sense and the laws of trade, and improving the Act in the points already suggested, securing the freest inter-commercial traffic between the States, and protecting such carriers from interference or from violence. Favorable legislation will help the people of the country, because it will tend to invite capital from its centres to develop district after district of our wide domain as population or natural resources may indicate. Restrictive or unwise legislation will prevent capital being invested in such directions, and not only will the supply of facilities demanded by the growth and development of the country be retarded, but the facilities, when supplied, will be in consideration of profits that will compensate for the additional risk due to such restrictive legislation.

The legality of the Act will sooner or later be tested by an appeal to the Supreme Court of the United States. The State governments must protect the corporations they have created in the performance of their chartered duties and in the enjoyment of their chartered rights. Such a test will introduce a question of State sovereignty that cannot be settled by any forced construction of constitutional power, to meet, in view of the whole amount of inter-state commerce, a very limited abuse of such commerce and which was the development of a temporary condition of production of trade and of transportation; an abuse which will correct itself through the settlement of the country by the increase of consumers and of local business on the lines of the railways, by the increase and permanent holding by capitalists of the shares and securities of the railway corporations, by an increase of general knowledge of railway operations, by a closer supervision over the managers and the officers of such companies by the share owners, by the absorption or control of the weaker by the stronger companies, and by the imminent changes in the character and amount of the freight which produced the under-cutting of rates, etc., and the consequent favoritism. These abuses could have been largely remedied by the adoption of the rational measures already indicated, and they did not require the drastic pro-

visions of the law as passed, provisions which have failed to correct the evils and abuses for which they were enacted and which have injuriously reacted upon the general transportation interests of the country.

More than this, in the attempt by the Commissioners to carry out the law they have realized the impracticability of its provisions, and have shown, by their attempts to determine laws of transportation and to affix rates, their utter inability to improve on the well-known laws or economics of trade, which are as well established in their line as the common law of England.

To form a correct judgment as to the wisdom of the law as passed, a further analysis of the influences that led to its adoption in its present form may be helpful. Such an analysis would include the communistic and political influences which were apparent in the passage of the Act.

There is inherent in man a disposition to take the property of others, whether under or in opposition to the principles of justice, right, and law. This disposition furnishes one of the difficulties in the way of legislation in a representative form of government. The class of people who are in a majority invariably endeavor to pass laws favorable to themselves, and where this majority is very large, the influence of such a class becomes controlling in legislation. The essence of communism, as affecting the rights and property of others in a district of debtors, develops itself, while the natural unwillingness remains as to any division of their own property among those less able. The depression of prices for the products of the soil and for meats a few years back developed this feeling throughout the more newly settled countries in the West, whose people felt the change in prices most severely. That such a people should have demanded of the transporters rates that would leave the producers a profit was natural, but that such claim for relief should go beyond the demands of justice and equity was left to the practical politician, who saw his opportunity and made use of it to gain place and power. The Western and Southwestern politicians grasped (1) the facts of the demoralization in rates, in all cases precipitated or brought about by the weaker railroad companies that never should have been built, and (2) the necessity of some controlling power; but they went beyond the demands of the

case by placing the whole railway interests of the country in the hands of five irresponsible citizens, to be appointed by the President of the United States and confirmed by the Senate. The legislatures of many of the Western States completed the circle of wrong by passing destructive laws affecting the ability of the railway corporations to serve the people.

This communistic feeling, with its political attendants, is still rampant in the West and is invading the Middle States. Its product is to be seen in the Farmers' Alliance and the Grangers. They are engaged in making war on the capital of other people. The Inter-State Commerce Act, as it stands, was passed in obedience to the presence of this feeling among the people, and for the selfish purposes of the mere politician.

THE PRACTICAL WORKING OF THE ACT.

The object of this paper is to discuss the practical working of this Act in certain directions, leaving the questions as to the legality of many of its provisions to those who are learned in the law.

It was intended to cover three points in the treatment of interstate commerce by the railway companies. First. That the principle should be established that no greater charge for transportation should be made for a shorter than for a longer haul. Second. To prevent the officers of any railway company discriminating in rates of freight between shippers, thus doing away with the many devices adopted to secure freight; and Third. To regulate the rates of freight charged on such commerce by the railway companies.

The FIRST point presents two sides. While on the face of the statement it has the appearance of fairness and right, yet it does interfere in certain cases with the equities of shippers and with the interests of localities wherein a large tonnage is concentrated, and with the interests of the railway companies by the increased cost of furnishing the same facilities for a small and irregular tonnage which are due to the shippers of a larger tonnage. The larger cities do not derive all the advantages to which they are entitled from their location.

The SECOND object of the Act is to secure equal treatment to

all shippers, by preventing discrimination in rates of freight. This is a most worthy object, and to some extent the Act has been beneficial. It has placed all discrimination under the ban of an immoral act, as being wrong in itself and in opposition to the law of the country. It has decreased the number and amount of such discriminations by the necessity for secrecy in avoiding the exposure and the penalties of the law; but the Inter-State Commerce Act has not stopped such acts of discrimination by the various means so well known to shippers and freight agents, and which cannot be reached by any Commission. These devices might be partially exposed by a specially organized detective bureau. Shippers hesitate at entering suit against fellow-shippers and railway companies, due in part to the difficulty of proof and to the uncertainty of success, and there is an unwillingness of one railway company to bring suit against another railway company. The inability in any case to receive sufficient compensation for the losses incurred through acts of discrimination, and for the loss of time and outlay of money, with the length of time that must elapse before a decision by the Commission can be reached, these have their influence on all parties. There may be but one cause of complaint by one party, and the discrimination against that party may cease with the one act. The simple fact is that business men and railway companies in this country cannot await the rectification of errors by such a slow process as an appeal to a Commission; if a loss has been sustained by some act of discrimination, they charge it to their profit and loss account.

This evil of discrimination in rates cannot be cured by the provisions of the Inter-State Commerce Act. So long as there are railways seeking freight to the leading and distributing markets that furnish facilities inferior either in time or safety to the principal lines to such markets, there will be such discrimination or under-cutting or evasion of published rates. The error of Congress was in not appreciating this fact, and the utter inability to reach and cure the evil by such provisions. The principal remedies for the evils named have been already stated; they grow out of the circumstances, surroundings, and future prospects of the railway companies, and from the character of and the future markets for the leading classes of freights.

That the members of Congress forbade by the Act, legal and binding agreements between the railway companies as to division of freight, is another evidence of their ignorance of the difficulties to be met in controlling the acknowledged evils, and the groundlessness of their belief that they could produce a result by law, which was otherwise impossible. The result has been the opposite of what they anticipated, and the expression of public opinion, supported by that of the Commission, enforces the argument, that the evils of discrimination can be, in addition to the influences already noted, curtailed, lessened, and brought to a minimum by a legal recognition and enforcement of agreements made between the railroad companies as to division of traffic. In this way the weaker lines can be given a certain amount of freight, which they will secure at any price, or by any evasion of the law. In the one case there would be no necessity for discrimination between shippers, by rebates, etc., while, as it is now, such discrimination and rebates will be given. While such a law will not altogether cure, it will do much to reduce the evils.

The THIRD object of the Act was to secure to the people proper rates of freight for inter-state commerce, by preventing overcharges, by securing safety and quick delivery to the freight, with proper power, cars, etc.

The provisions of the Act which gives this great power to the Commissioners are of more importance to the people and the owners of the railway than the other points already discussed.

The wisdom of such provisions, of giving such power, if it exists in the General Government, deserves most careful thought. The encroachments of power should always be carefully watched. If the Congress of the United States has the power to control all the railway property in the country, it has the power to control all other means of transportation. If it has the power to determine the rates of freight on a railway, it may fix the rent of a house or of a farm, the price for the products of the soil, of the forest, of the sea, and of all manufactures; it may take the property of one citizen and give it to another, without recompense.

In more fully discussing this question, the first point will be to understand the equitable relations that the producer and transporter bear to each other.

FIRST. THE RELATIONS OF PRODUCERS AND TRANSPORTERS.

The best illustration of the position of the parties to each other may be found in the case of a newly opened section of country, and the builders of a railway to and through it connecting by rail or water with the distributing markets.

The land before the railway is built is practically worthless, except in some cases for raising stock which are their own transporters. Its products would not bear transportation. Capitalists invest their money in a railway to such a district of country and immediately a value is given to the land, because its products can be carried to a market.

THE LAW OF DISTRIBUTION.

The next question is, How shall the moneys received for these products at the chief markets be distributed? First of all, the commissions and expenses of the seller at the market must be deducted. Next, such a charge for transportation as will pay the capitalist for the use of his money, and properly reward him for his enterprise and risk. Next, the cost of production, regulated by the average wages of the country. Next, the interest on the money invested in the property and in the capital employed; and lastly, or what is left will represent the value of the property, or the royalty of the land, a value primarily due to the construction of the railway.

The same reasoning will apply to a forest of timber, a mine of ore or of coal. These are more worthless than surface ground until capital opens a market for the lumber, the ore or the coal, and the distribution of the proceeds of the sale of such lumber, ore, or coal, should follow the same course: First, to meet the cost of delivering from the terminals of the railroad or canal to place of sale. Second, to meet a charge for transportation which shall remunerate the capitalist for the investment of his money and furnish an inducement to further investment in the same or in other lines. Third, to the cost of production or mining and delivering to railroad or canal, including superintendence and management. Fourth, to meet the interest on capital invested: and Fifth, the balance would remain as the royalty or measure of the

value of the property, due to the construction of the railway or the canal.

There is no value in the ground or mine until it is created by the investment of capital in a means of transportation, whether that is by wheel-barrow, by a cart, by a wagon, by rail, or by water.

It is important that this analysis of the distribution of the proceeds of productions from the market should be thoroughly understood, because it is at the bottom of this whole question, and is in direct antagonism to the communistic theories involved in the decisions of the Inter-State Commerce Commission.

The assumption of the Commission is, that the ability to produce freight in any given case, whether from the farm, the forest, or the mines, always exists; that this ability is in the nature of a "public interest," and, therefore, the charges on all avenues of transportation must be such as will permit such freight to be produced, to reach a market, and receive such prices as will warrant the producers in keeping up this interest in which the welfare of the people is involved.

That this continues to be the position of the Commission is evident from their recent decisions in the cases of *Coxe & Co. v. The Lehigh Valley R. R. Co.* and of the *Delaware State Grange of the Patrons of Industry v. The New York, Philadelphia and Norfolk and other railroad companies*. A more unsound and dangerous theory could not be imagined, unless it went so far as to utterly destroy the value of the property of transporting companies or of all carriers. It is in opposition to all the customs and laws of trade. The farmers who unite in sending their vegetables, butter, eggs, meats, etc., to a market by an agent who owns a horse and wagon expect to pay such agent for his services and for the use of his horse and wagon a price that will compensate him for the use of his labor, skill, and capital—a price not based on the profit to the farmer, but on the value of such labor, skill, and capital.

The manufacturer buys his raw material, works it up into marketable shape, and sends it to his agent in a distributing market to sell. The commissions paid such agent are not regulated by the profits of the manufacturer, but by the value of the skill and

capital of the commission merchant. The manufacturer may lose heavily through changes in the value of his wares, yet that does not lower, increase, or affect the commissions paid to his agent.

The General Government collects postage on all the letters it carries, without reference to the value of the letter to the sender or receiver; it first demands satisfactory pay for its services. The Government collects customs to meet its expenses, without reference to whether importers make money or not on the goods or wares they bring into the country. The stockholders in a transportation company must first pay the cost of conducting their business, repairs, interest on borrowed money, etc., before they can realize their profit.

If the theory of the Commission is correct, the producers and transporters are not even partners; the transporters are merely agents furnishing capital, skill, and labor, that the producers may make larger profits; the producers object to any idea of partnership or any law that would regulate rates of freight by their profit. While they are not communistic as to their own property they are as to the property of the transporters.

Again, the Commission forget that the railroad companies are producers as well as the farmers, manufacturers, or miners. They produce transportation, and have it for sale, and there is no justice in forcing one producer to sell his products at prices to enable another producer to make more profit, and especially when the other producer, the farmer, the manufacturer, or the miner, is not required at all times to purchase the products of the railroad company. This claim that the transporter is a producer is in harmony with his or its duty as a "common carrier," and is entitled to be fully appreciated in any discussion of the questions now being considered.

The merchant rents a store at prices which are satisfactory to the owner; but if the merchant makes more profit than was anticipated at the time of renting, he would consider it a great wrong for the owner of the property to demand more rent, and as well would the owner of the store demand his full rent though the renter failed to make his business profitable.

The farmer who rents a farm at rates based on low prices of grain, is not willing to increase his payments to the owner if prices

advance, and he makes more money than was expected when he rented the farm, and *vice versa*, the landlord is not willing to forego his rent if prices go down. The profit of the producer has, of itself, nothing to do with the rates charged by the transporter, except as they affect tonnage and its profits, and this is a question not of right but of policy.

Take the public roads, the streets and paved ways of a city or village. The farmers, miners, and real estate owners have to pay their share of the cost to build and keep such roads and ways in repair, without regard to their use of them or the profit derived from the farm, the mine, or the rented house. The users of a turnpike have to pay the tolls which are laid to keep them in good condition, and remunerate the owners for cost of construction, without reference to the question of the profit the user derives from them. To suggest that in either of these cases there should be a division of profits, or that the taxes or the rates of use should be measured by the profit of the user, would be accepted as absurd. Wherein then is the difference between these cases and that of a railroad company? They are identical in principle.

Illustrations of the correctness of this method of distributing money received from sale of products as herein laid down might be multiplied. It forms the basis of all business transactions the world over. No man is forced to cultivate the land, to produce fruit and vegetables, to mine iron ore or coal, to manufacture any article, or in any way to furnish products for transportation to any carrying company; and if he has been engaged in producing freight he is not forced to continue in it. If he does so engage in such business at any point or place, it is of his own choice, in accordance with his own judgment, with a knowledge of the markets for his productions and the rights of the transporter, if such exist, and he cannot claim that there is created, by his own act, any special "public interest" in himself or in his employment.

Again, the theory of the Commission would subject one party to the results of the bad management, lack of capital or business incapacity of another party, which would be contrary to proper principles. If a citizen engages in the production or manufacture of an article which costs him more to deliver to the consumer than

the consumer will give in return, the fault is not in the consumer or the transporter, but in the producer.

Still again, if the property of any citizen is taken or interfered with by the State or General Government in the public interest, then compensation must be given, and a jury is the established method of testing the value of such injury.

The law of distribution, as herein established, is the only safe ground to take. It places all parties on an equality and would prevent the gross injustice to many parties, and as a consequence to the country, that has been perpetrated by the false theories of the Inter-State Commerce Commission. As a result of these theories the Commissioners have undertaken to establish what they deem proper rates to be paid by producers or shippers, and the cases of *Coxe & Co. v. The Lehigh Valley R. R. Co.*, and of the *Delaware State Grange v. The New York, Philadelphia, and Norfolk R. R.*, and other companies, are fair illustrations of the impracticability of the law and the injustice of such decisions.

SECOND. PRINCIPLES OF MANAGEMENT BY TRANSPORTERS.

It will be well also to consider the general principles adopted in the management of railways and by other transporters, in connection with the public interests.

It will not be out of place to preface the discussion of this subject, by the remark that very much of the trouble that has arisen in the management of railways has been due to the introduction of general railroad laws in the different States, and to the looseness with which these laws have been framed, providing no test whether a proposed railway was required in the interests of the public, nor regulating with any judgment the amount of stock or bonds that the corporation might issue, nor the amount of charges that could be made, nor the character of the construction of the road, and retaining no supervision or control over their management. Whether the advantages resulting from the original argument in favor of such laws, viz: that the virtue of the legislators might not be overcome by bribes, by advancing the interests of certain parties against other citizens, by which the development of all parts of a State would be restrained, have been equal to the demoral-

ization of the people by their making possible speculative schemes ; whether the loss of many millions of dollars, not by the schemers, but by innocent people placing faith in the promises of the promoters of new railways ; whether the levying by weak roads of black-mail on stronger companies ; whether the building of unnecessary lines of railways, by which the people have to pay an increased charge for the transportation of their products ; whether with all these drawbacks the States have been compensated by the delivery from temptation to the legislators or their increased virtue, could hardly meet with an affirmative answer. The passage of such laws is, in fact, an acknowledgment of a defect in our representative form of government. The evils arising from the general railroad laws should lead legislators in the different States to carefully revise them, and among other points provide : first, as in Massachusetts, following the English laws ; that some proof that a railway is needed before the kingly power of eminent domain should be granted, and that the traffic would be remunerative ; second, proper safeguards as to their construction ; third, that one-half or two-thirds of the cost should be met by stock and the balance by bonds, and speculative profits to construction companies prevented ; fourth, careful regulations as to charges, interchange of freight and passengers, and furnishing proper accommodations and facilities for those using the line ; fifth, that such companies should be protected from destructive or undue rivalry from other roads and yet proper competition at all times be maintained ; sixth, that the same taxes should be levied on the profits of the railway companies as on other invested capital.

To return to the discussion of the general policy which governs the managers of railway companies as to charges, extensions, improvements, and development of country.

No one will deny that the people who invest their money in any branch of business expect to derive a profit therefrom proportionate to the capital invested, skill required, and risk incurred, and that the legislation of all civilized countries encourages such expectation. Nor will it be denied that the original investor in railway shares or bonds does so on faith in the contract made with the State, its inviolability, its guarantees and the sufficiency of the powers granted, and that the country reached by the proposed

road will develop and furnish sufficient traffic to make the investment of the money profitable. It is, also, but fair to assume that the boards of managers desire to make their properties profitable, and to do this use every effort to develop trade and traffic on, and to attract population to, their lines. They expend large amounts of money to improve their roads so that trade and travel may be attracted both by the facilities afforded to shippers and by the low charges for the service, well knowing that the success of their properties will depend on the character of the service rendered and the rates charged. The managers of a railroad company consider the local traffic for which the roads were built as the foundation of their business, but to enable them to take better care of such local traffic they encourage and aid branches and extensions of their lines and make connections with other lines to attract business to and over their main line on the principle that a small profit is better than no profit, and for the many advantages that come to the main lines by such branches, extensions, and connections. The local business derives a direct profit from this increase of traffic drawn from other lines in the ability of the company to furnish greater facilities for handling their own products and for more frequently moving their passenger trains, and ultimately in decreasing the cost of transportation to the local shippers.

Very few people appreciate the work of the passenger and freight agents of railway companies. The business of each line of road has its peculiar traffic, to encourage which is the duty of these agents. The work of classifying freight and affixing charges that will pay a profit to the transporter while increasing the traffic, requires an intelligent understanding of all branches of business and a high mercantile ability to appreciate the influence of rates on the traffic.

The effort of the Commission to secure general classification of rates by the railroad companies will probably fail, as well as any classification of rates on specific articles of freight. The rates adopted by each company may be accepted as the best for the development of each article of freight, and such rates cannot be compared with those of other companies, nor can the different rates on the same roads be compared, because the rates on each article are determined by its own laws of increase and profit.

It is also fair to add that freight agents, as a rule, err on the side of the shipper, in the belief that the adoption of lower charges than are at the time profitable will in the end so stimulate business as to quickly secure to the companies a profit.

Again, the outlay of every dollar in permanent improvements, in betterments, in leasing or aiding other railroad companies, over and above the current expenditures required for a railway and its business at any given time, is attended with a risk that the public do not understand and cannot appreciate. The expenditure of large amounts of money in additional power, in new cars, in enlarged buildings, in the tracks, in stations, in wharves, in terminals, etc., which is made in expectation of increased trade, often meets with loss in place of profit. The customers of a railway company are often very wayward in their choice of competing companies; slight reasons will often decide the line to which they will give their custom; and managers are led to over-estimate the demand for such an outlay of money in betterments, etc. The railway companies are not exempt from the uncertainties of trade which often wreck the most prudent business houses.

The influence of the two facts already stated may justify fuller notice.

First. That the farmer, miner, or manufacturer is not forced to use or to continue to use a railway for his transportation purposes: and,

Second. That a railway company must carry all freight offered to it to any point on its line; and by the construction of the Inter-State Commerce Act, must by connections with other lines carry such freight to any point in the United States reached by a railway.

The case of Messrs. Cox & Co. furnishes a capital illustration of the liabilities to losses by railway companies by reason of the facts just stated. It is published in the press that Messrs. Cox & Co. have contracted with the Reading Railroad Co. to carry the coal from their mines to certain markets; that Messrs. Cox & Co. agree to annually furnish to the Reading Company one million of tons of coal for transportation, the connection between the Reading Railroad Co.'s line to Catawissa and the mines of

Messrs. Cox & Co. being made by the construction of certain railways by each party.

The withdrawal of such tonnage from the Lehigh Valley and other companies will render the outlay of money by the Lehigh Valley Railroad Co., which was made to carry the tonnage of Messrs. Cox & Co., for a time, useless. The tonnage of coal on the Lehigh Valley Railroad lines will by this change be reduced about twenty per cent., being one million (1,000,000) tons, from a total of some five million (5,000,000) tons. If this proportion is correct, or whatever the proportion may be, whether the reduction will amount to ninety-five per cent. or five per cent. of the whole inter-state coal tonnage of the Lehigh Valley Railroad Co., it simply means that this proportion of the cost of building the railroad, of the cost of its superstructure, of its power and supply of cars, of its terminals and wharves, of its buildings, of its superintendence, and of its general expenses, due to furnishing transportation for such an amount of coal, will not earn any profit to the company. It is in effect equivalent to a direct loss of the amount of money represented by the first cost of such facilities and its proportion of the annual expenses.

The Lehigh Valley Railroad Co. will, no doubt, make good this loss by gain in other directions.

The wisdom and foresight of the managers of the company in extending their lines and increasing their traffic in other branches are now apparent. The increase of traffic on their different roads, with an increase of coal mining, will rapidly supply the loss made by the withdrawal of the coal tonnage of Messrs. Cox & Co. Should the prices of coal fall off, it is possible that all the carrying companies may be forced to reduce charges and a lessened amount of coal tonnage may prove to be no loss, if its place is made up with other and better paying freight.

The commercial value of the liability to loss by diversion of traffic is not appreciated by the people; they fail to remember that the stage may be taken to another route, the steamboat to ply between other points, but that the railway when built is stationary, and its owners have to incur all the risks, while the shippers incur no such risks or liabilities to loss. It is, therefore, but just that the railway company should charge a certain amount to

cover the liability to such losses, for they are constantly occurring with every company ; and shippers of freight and passengers on railways should recognize when such charges are made that they are due to their own right to use or not to use a railway property. This is entirely within the custom of merchants, miners, manufacturers, and business men, who add a percentage to the cost of what they sell, for the risks by fire, losses in sales, etc. etc.

The public also fail fully to comprehend and value the fact that the railway company is performing the duty of the State in furnishing the necessary facilities for the transportation of the citizen and his productions. If the States built the railroads, they would not permit undue competition, and would not build a road to destroy or seriously injure the property and value of another road already constructed.

The immediate managers of the railroads are active, energetic men, and have a right to demand that they shall be recognized as treating the interests with which they are charged as business men on business principles, and that every act based on business principles benefits the contributors to the traffic of the railway company. A very great wrong is done to those interested in railway management, and to the country at large, by the unhealthy charges which the public prints scatter before the people as to the speculative and destructive tendencies of railway management and its reckless disregard of private and public interests. Take the men in responsible positions in our American railways, and a more intelligent, skilful, honest and devoted body of men cannot be found in any branch of the industries. Much of this clamor has its origin in the effort to influence public opinion to force the railways to submit their charges or rates to the approval of parties using the roads, and to this feeling, as has already been indicated, are to be attributed the impracticable and unjust provisions of the Inter-State Commerce Act. The tendency to control railways for purely speculative purposes is decreasing in this country. While there may be much gambling in shares at the stock boards, it is based more on the prospects of the country tributary to a company furnishing freight, than on forcing freight from a line to reduce its earnings, and thereby depress the price of its shares, or by temporarily diverting traffic from another line to show a large

increase, and thereby add to the price of the shares. Such manipulation of railway earnings is becoming more difficult and of rarer occurrence every year. The direct management of the railways may be accepted, as a whole, as in the line of their best interests, which includes the country they traverse and the owners of the capital invested. Errors of judgment may occur; this is common to man in his enterprises everywhere. The railway managers have a right to be ranked with and judged as other men are judged.

The general policy of railway managers may be illustrated by the two companies already alluded to, viz: the Lehigh Valley and the Philadelphia and Norfolk Railroad companies. Take the Lehigh Valley Railroad Company. This company received its charter from the State of Pennsylvania, and became a citizen of the State. The object of its building a railway from Easton to Mauch Chunk was to develop a certain anthracite coal district, by furnishing an avenue by which certain fields of coal could be brought by rail and water lines to the cities of Philadelphia and New York as distributing markets. If the company had built the road and stopped at that point of its development, the region reached by it and for which it was first built would not for many years past have been able to send one ton of coal to market by reason of the cost of carriage, and the want of facilities by the railroad company through lack of financial ability to furnish them. The company would have been entitled to demand, to meet its expenses, such charges for freight as would have effectually prevented all mining; and the same statement is true as to every other railway reaching the anthracite coal districts, or any other part of the country, and anthracite coal land, now so valuable, would have been practically worthless, and the civilization of the people, so far as it may have been influenced by the introduction into manufacturing and common use of this coal, would have been retarded, and the country would have lost one important element of its wealth.

The query will naturally be propounded by what means or policy the reverse of what might have been the condition of the Anthracite coal interests has actually occurred, so that railways have been constructed to every part of the coal field and directly to the

great distributing markets on the Atlantic, at the same time largely reducing the cost of transportation and affording some profit on the money invested.

The answer is simply, that it became evident to the management of the Lehigh Valley R. R. Co., as well as to the managers of the other companies reaching the anthracite coal field, First, that to increase the consumption of anthracite coal, it must be delivered at low cost to the consumers; and, Secondly, that this would require (1) the adoption of the most economical methods of mining on a large scale, (2) the handling of a large tonnage of coal, and (3) the finding of new markets and consumers to save the miners and owners of coal property from ruinous prices by over-production. The result was that the different railroad and canal companies expended large amounts of capital in reaching such new markets. To introduce their coal into New England, Northern New York, Canada, and the West, was their chief aim, and for many years they have by low rates with little or no profit been building up a demand for the surplus coal that would otherwise have overwhelmed the Atlantic markets, and thereby have saved to the complainants in the case referred to against the Lehigh Valley R. R. Co., and to all owners of coal lands the present value of their coal properties. But more than this, the Lehigh Valley R. R. Co. has sought, by extending its lines to Lake Ontario, to Lake Erie, to the New York Bay, and by various branches and by its connections with other lines, to bring to and over its line a greater variety of freight and an increased number of passengers. This new business has to be done at very low rates, but the increased distribution of anthracite coal and the increase of other freight have demanded a large addition to the plant of the railway company, including tracks, power, equipment of all kinds, terminals, etc., and have enabled the company to carry the local freight at much lower rates than would have been possible without such additional freight and travel derived from these new and outside sources. This new traffic has saved the original investment in the railways and the property on its line from absolute loss, and furnishes a complete answer to the questions asked.

In considering the justice of the decision of the Inter-State

Commerce Commission in the case of *Coxe & Co. v. The Lehigh Valley R. R. Co.*, it should be borne in mind that this decision affects all the companies reaching the anthracite coal fields, and that the same policy which influenced that company to seek new markets and sources of traffic, though at little profit, has influenced the other transportation companies in the same direction; and further, that the results have been in all cases the same, inuring to the special benefit of miners and owners of coal properties on the main lines of the different companies, as well as of the shareholders; and still further that these principles are all in harmony with the duties of the transporting companies as "Common Carriers."

There is another view of this question of determining rates that should have had weight with the Commission, viz.: that if the protection of the "public interests" was the object of the law, and the principle was recognized as correct that private interests must sometimes suffer in dealing with questions affecting the public welfare, and granting that it might have been proven that Messrs. Coxe & Co. suffered from the rates of freight as charged, then the Commission should have treated this question not as of Coxe & Co. against the Lehigh Valley R. R. Co., but should have considered the anthracite interest and all the railroads and canals reaching into it as a whole, and the demand for reduction of tolls as affecting the whole interest, and not in its relation to one region only, viz., the Lehigh coal field. The Commission erred in not recognizing the fact that the case of *Coxe & Co. v. The Lehigh Valley Railroad Co.* could not with justice be considered by itself.

The question in this case is in some respects unlike any other that has been before the Commission. The anthracite coal-field is limited to a comparatively small district of country, divided into the Lehigh, the Wyoming, the Lackawanna, and other regions. They are reached by some eight lines of railways, distributing the coal by rail and water to the same general markets; the charges for such services made by the railway companies must, in the nature of the case and in accordance with the laws of trade, be the same; there is also a remarkable similarity or equality in the cost of such transportation to the several companies. So that in justice to all parties a certain rate for the carrying of such Inter-

State Commerce coal should have been established for all the companies. This the Commission could have done under the power given them by the Act of Congress. Yet their decision relates to one company only in its carrying business from only one of these regions, viz., the Lehigh.

To ascertain what would be a fair charge, one that would not discriminate against producers, the Commission should have investigated the whole question as to cost of such service to all the companies, including all their operations and all the equities involved. Now it is acknowledged that to make such an investigation, as well as to draw from the facts ascertained a proper conclusion as to the proper rates, would have been beyond the ability of the Commission. In the fact of such inability to determine a proper rate for all the companies is to be found the strongest argument for their inability to determine such a rate for the Lehigh Valley Railroad Company. If this argument is in the line of a *reductio ad absurdum*, it also clearly shows that these problems cannot be solved by a Government Commission; they can be worked out through the business capacity of the managers of these several railroads, who are not theorists but practical men, and are governed by the laws of trade and the hard facts of cost and profit. The Commission, therefore, failed in the performance of their duty by not grasping the whole question involved in the appeal of Coxe & Co.; and by making a decision on a part of a case which should govern the whole question of rates from the anthracite coal field, they have done a great wrong to the interests involved.

THIRD. COST OF TRANSPORTATION.

The true cost of carrying passengers and freight by a railway company is made up of many items, the interest on capital, the depreciation of property, real and personal, the liability to pay heavy damages for loss of life and property, the loss through machinery and rolling stock becoming antiquated, the financial losses through customers, agents, etc. etc.;—these as well as the direct charges for transportation must be taken into account.

But leaving out these and many other items, how could an

expert ascertain the cost of carrying each one of the many kinds or even classes of freight annually passing over any railroad or over any or all of its connections?

To determine the actual cost of transportation of freight and passengers on a railroad would be impossible by the best trained railway men. This is due, as already stated, to the many elements entering into the problem. Taking the expenses of a company for an average of years will not suffice, for the condition of the whole property of a road in the first and last year thus taken, may greatly vary, and the amount and kind of transportation be widely different. The result is that railway managers take the running expenses for each year, and recognize their annual statements as approximate estimates, as a general guide to the officers, and as some test of the economy of their management. It has often occurred, where low cost of transportation was shown by the figures in an annual report, that the property was being reduced to a crippled condition, to repair which would cost a large amount of money, and that the annual returns, perhaps for several years, have been fallacious, and that interest has been paid and dividends declared which were not earned. It is in proportion as railroad properties are well kept up, and on the basis of the best experience and judgment, that the condition of the property, as shown by the books, will more nearly accord with that shown by the property itself.

If it is true that even the best informed and practical men cannot tell within close figures what the real cost of operating a road has been during a year, or a series of years, then the difficulty is greatly increased when an attempt is made to discriminate between the cost of transporting passengers and freight, and between different kinds of freight, with various risks, and between the cost of carrying passengers and freight at different speed of trains and with greater or less accommodation of passengers.

FOURTH. PROFIT ON CAPITAL.

If an estimate could be made of the losses in interest and principal heretofore sustained by investors in railway shares and bonds

at the bottom prices, and if to this could be added the difference between the real value of the whole railway plant of this country and the share and bonded capital it represents, the sum total would startle the financial world. Such losses, without considering those sustained by foreigners, could only be borne by a people situated as we are, in a new country, with boundless possibilities, and holding out the prizes of constant opportunities for large earnings, comfortable support, and amassing fortunes.

Those who remember the early struggles, the risk of property and fortunes of the projectors of our leading lines of railroad, should feel that those who have followed in their footsteps and have endeavored to carry out their broad views, deserve at least just treatment by the General as well as by the State governments, and should not have the value of the properties they have so carefully nursed endangered by unwise legislation at the bidding of selfish agitators.

How much profit or what rate of interest the owners of these railroad companies should receive as a result of their enterprise may be accepted as an element in considering the question of their relation to the public interests.

(1) It is fair to assume that the agreements made as to rates of interest on borrowed money and on leases or contracts with other companies are fixed, cannot be altered, and were accepted as fair when the transactions were completed. The relative amount of the interest on such borrowed money, and of the rentals to be paid on leases or contracts to the shares of the companies, varies as greatly as the number of companies. (2) That each company is primarily entitled to earn all its fixed indebtedness (unless the General Government, when it destroys values through its agents, will undertake to force all its bond and lease holders to proportionately reduce their claims); to earn all its expenses and enough to keep the property in good condition, and to earn such a dividend on its shares as will fully recompense the owners thereof, and enable such company to dispose of additional shares of stock to make such improvements and betterments and general increase of facilities as will meet the wants of the public. From this standard, variations will be necessary to meet competition, or to prevent by its charges a loss of traffic. Any railway company

that cannot raise by sale of its shares the money required for the improvements, etc., that are needed, is necessarily on the road to bankruptcy, either by failing to make such improvements, to hold its traffic and to meet competition, or by its limit of sale of securities to raise money for such purposes being sooner or later reached.

The rate of dividend that will secure purchases of stock at par varies with the price of money, which again is affected by the business and political influences in the whole world, and is still further influenced by the confidence in the management and the future possibilities of any railroad company. The ability of any body of sharp speculators, under the general railroad laws of the States, to construct a railroad alongside of or closely competing with a successful and prudently managed railroad for the purpose of levying blackmail has had many illustrations, and, just as long as these laws exist, will the confidence of capitalists in the shares and securities of the railways be lessened, and to secure money will require higher rates of interest and dividends, with increased charges for carrying the people and their productions and manufactures.

The risk involved in the ownership of railway property is a proper element in the determination of rates of freight. A share of a railroad should be so well secured as to meet all the losses from such risks and leave an acceptable dividend. Every good business man provides against the contingencies and risks of trade by his profits in prosperous times ; the same policy should characterize railway management. In their efforts to meet the demands of the public they are apt to expend money lavishly in prosperity for which they suffer when the tide turns.

It is to be hoped that the people will consider these things which unsettle railway values. If the people do not take action, many important properties will be relegated to the control of the mere gambler in bonds and stocks. There is no body of citizens in whose profits the welfare of the people of this country is more directly involved than in that of the owners and investors in the shares and securities of the railroad companies ; the progress of the country is dependent on the railways, and on securing the building of those that are required from time to time.

If properly treated by Congress and State legislatures, railways will be managed and built on the proper basis. If the present policy continues, with the promise of worse treatment, there is danger that the railways will deteriorate in quality, render less effective service, and charge higher prices for their services.

In dealing with such important interests the members of Congress should take a broader view of the questions connected with the control of the railways of this country, and not accept the teaching that it is a mere contest between certain producers and transporters as to who shall reap the largest profit, and to settle this dispute that the Congress of the United States shall appoint through the President five men, to make, as they may judge fair, a division of the profits. Such action is beneath the dignity of the nation and the importance of these interests to the welfare, prosperity, and safety of the people.

SUMMARY.

An effort has now been made, imperfectly it is acknowledged, to place before the public—

(1) A correct view of the law of distribution of the proceeds of the sale of all products of the earth, the forest, the mine, or of manufactured goods, which require the medium of transportation to reach a market.

(2) To state the general policy of railway managers and other transporters in the management of their properties in view of their duties and interests as common carriers; such policy tending by the natural laws of trade and competition to insure lower prices for carrying persons and freight, and to establish just and equitable principles in their dealings with the people, thereby adding to the wealth of the country and the happiness of the people.

(3) To show not only the difficulties in the way of estimating the cost of such transportation but the inability to arrive at its precise cost, and more particularly of any one item or class of freight.

(4) To establish a measure by which a rate of profit on the stock of such companies may be based which will be equitable and just and to which additional profit may be added, according to varying circumstances.

APPLICATION.

The wisdom and justice of the provisions of the Inter-state Commerce law, which empower the Commissioners to perform their various duties and to prevent discrimination by establishing rates, can only be sustained by their harmony with the principles and facts thus summarized. These principles will meet with the approval of public opinion, because they are consistent with the laws and economics of trade in this and in all civilized countries, and with the experience and observation of every citizen. How nearly the provisions of that Act or the decisions of the Commission harmonize with such principles, or how far apart they are from any sympathy or connection with them, may be fairly shown by the decision of the Commission in the two instances already named, viz., that of *Coxe & Company v. The Lehigh Valley Railroad Company*, and of *The Delaware State Grange v. The New York, Philadelphia, and Norfolk and other railroad companies*.

In the powers given to the Commission to fix rates, Congress has certainly assumed an authority far beyond any precedent or constitutional provisions. It has given to this Commission judicial as well as executive powers, for there is involved in the performance of their duty: (1) the settling of the claims of different parties to a fund; (2) the enactment of law to enforce their decision. The fund is the amount that may be claimed by the transporter and shipper, and the enforcement of their decision is to be made by the rates of freight they may establish.

The Commission assume in each of the above cases that the producers and miners represent a "public interest" which demands that fruit, vegetables, and coal shall be carried at a rate fixed by them.

To establish this rate they first assume that the owners of the land are entitled primarily to a royalty over and above the labor and interest involved in the production of the fruit and vegetables, and in the latter case they fix the royalty on coal at 40 cents per ton. This or any such assumption of primary value in the land or in the coal mine violates the fundamental principle in the recognized law of distribution the world over.

If this theory of the Commission is correct, as to protection of

“public interests” and the primary right of every citizen to have the advantage of his location and of his production secured to him, then they violate it in both decisions. On that theory in the one case the growers of vegetables and fruit in Virginia represent a “public interest,” by the fact of their position, and were entitled, under the laws of trade, to the advantages of low rates arising from their being reached by competing lines of transportation. And as the profit arising from carrying their freight reduced the cost of transportation to the producers and shippers on the main line, the Commission having ordered a reduction of rates on the main line, would, to keep the Virginia producer on an equality, also have to force the railroad companies to proportionately reduce their rates on that trade. If this was done, the main-line producers would not be benefited, because the market price of their produce would be proportionately reduced and the railroad company, from loss of profit on the competitive trade from Virginia, could not furnish the same facilities to the producers on the main line in Maryland and Delaware. The Virginia producers are not dependent on this line to reach the Eastern markets, and in the end the main line producers would be injured by the very decision they asked for.

The same criticism is applicable in the case of the Lehigh Valley Railroad Company. The Commission could not, with any show of propriety, grant the claim of Coxe & Co. as to the rates on bituminous coal, but, as in the other case, made it up by reducing the rate on anthracite coal. If the Lehigh Valley Railroad Company had reduced their rates as per the fiat of the Commission, the firm of Coxe & Co. would have derived no benefit from it, because all the competing roads would have reduced their rates, and the market price of coal would have been lowered by the exact amount of the reduction in the rate of freight. The consumers of coal would have had but a temporary advantage, because at the rates fixed the railroad companies would have been unable to sustain or continue the facilities they now furnish the coal miners, owing to the loss of the profits on so large a percentage of freight, and the miners and owners of coal properties would have suffered more, because of the inability of the companies to meet the competition of bituminous coal; and further, this decision practically interferes, according to the reasoning of the Commission, with “the

public interest" as represented by the right of the bituminous coal miners to the advantage of their location. This use of the term "public interest" will always lead the Commission into contradictory decisions, because it is not based on intelligent principles, and is opposed to the laws of business. It is a mere catch-word and deceives the people.

So that there would have been no reduction of rates in either case if the "public interest" and welfare had been intelligently understood and appreciated by the Commission.

The Commission, in their decision in the case of *Coxe & Co. v. The Lehigh Valley Railroad Company*, make very full statements as to many facts in the history of the cost of mining anthracite coal, and the tariff of charges of the Lehigh Valley Railroad Company in 1887 and 1888, and they argue therefrom that because some items of freight were charged at a certain rate per mile, even for successive years, such rate must have been profitable, and, therefore, could be applied to the transportation of anthracite coal. Here again is a fallacy. The Commission have not probably examined into the reasons for such rates, or the amount of the business affected by them, or why the freight agents thought it profitable to fix such rates at low figures. If the Commission had pursued this question intelligently, they would have probably found a profit in other ways that more than made up for the low rates on certain articles; or they might have found that the rates had been too low, and that the freight agents had erred in their calculations.

The fact, already stated, comes in here with much force, that each company classifies its tonnage and makes its rates for reasons peculiar to itself, with the object of securing the largest profit consistent with the increase of traffic and of population in the country tributary to it.

This ignorance of the Commission as to the philosophy of these rates takes away from their pages of figures all their force, and the elaborate array of supposed facts on which to base their decision falls to the ground. They are not only worthless, but exceedingly one-sided and deceptive.

Again, the Commission blundered in the argument they draw from the financial condition of the company and the rate of its

dividends. No intelligent man, no one conversant with railway accounts, receipts, expenses, and dividends would say that the dividends declared by the Lehigh Valley R. R. Co. have been too large or more than a fair compensation for the capital invested, especially when all the possibilities that may turn up to affect its profits are estimated, and when the value of its credit and property is put at stake by the decision of five men, not one of whom, it is respectfully written, would be selected as a competent person to make an estimate or an analysis of the cost of transportation, whether of passengers or freight. But the Commission erred in admitting this question as an element in making up their decision. The railroad company had a perfectly legal and moral right to make any possible profit from charges up to the limit of their charter, granted them by the State, and the General Government cannot break that contract. That the company has fixed rates far below their chartered rights, whether of their own or affiliated companies, was solely due to their intelligent appreciation of the laws of trade. The interests of producers will always be protected by the interests of the transporter, and the legal intervention of any arbitration or power can only be mischievous in its workings.

Again, the Commission in both cases failed to render justice from their inability to determine the exact rates which would, according to their dictum, be reasonable and just, "both to the parties immediately interested and the public."

As their acts are judicial as well as executive, there must be some close approach to the accuracy of judicial decisions. Judicial accuracy means that the increment of error should be so small as not to injuriously affect either party. The interests involved are too large to be left to the mercy of unprepared judges. A man who is appointed a judge is supposed to be "learned in the law." In this case, men must be chosen, by force of the law, who are uneducated and unlearned in transportation problems. The requisition that the appointees shall have no financial interest in any transportation company would rule out almost every man properly fitted for the place.

Any one at all familiar with railway management will see that the whole argument in the case of *Coxe & Co. v. The Lehigh Valley R. R. Co.* is an effort to get at some result, from, as has been

shown, unreliable data. An accurate decision they could not make, and the variation from correct principles on which it is also based makes their failure the more complete and notable.

That this is so, is not the fault of the Commission. They are fairly intelligent men, strictly honest, and desirous of doing justice to all parties. The difficulty is in the law placing on them duties that could not properly be performed by any body of men, even by the most experienced railway men in the country.

Again, this decision of the Commission attempts to determine what the respective profits of the grower of fruits and vegetables and of the miner and transporter should be. Wherein does the Constitution of the United States give Congress power to take from one man and give to another, and by what rule does the Commission make such a division? In neither the Coxe case nor in that of the Delaware State Grange have they made a comparison of the capital involved in the farm and fruit orchard and in the coal properties and in the railroad companies, in the skill and intelligence required for their management and the risk run by the several owners, or given any clue to the rule by which they assume to make such a division. There has been almost every variety of cases before them, and on this most important question, the one indeed on which the law hangs, and for which it was passed, there has been no publication of the principles on which they assume to divide the profits between the producers of freight and the producers of transportation; and yet in almost every case that they have heard and decided, this question of division of profit has been the principal one.

The simple fact is, they have no laws or rules or facts by which they can arrive at such a conclusion as a judicial act demands. It must be remembered that they are not arbitrators, but are judges. In place of basing their judgments on a full understanding and appreciation of the facts and equities, in every case, and especially in the two cases now being discussed, they have merely made an approximation, a guess. It is no wonder, then, that they have gone so far beyond right, justice, and reason.

The Commission, having no secret tests by which they could make the division of profits, might have learned from observation that profits are generally fairly divided between labor and

capital, brains and labor, skill and ignorance, brains and capital, fixed capital and floating capital, employers and employed, etc., where the parties continue their relation one to the other. In this fact is the true solution to be found of this question of division of profits; it settles itself according to the laws of trade.

It would seem singular that a Congress of the United States should have been insensibly led away by communistic principles as to authorize, and that a Commission of such able men should have struggled through pages of figures, which they failed to comprehend, to make what was impossible, a fair distribution of the profits between Messrs. Cox & Co., and the Lehigh Valley R. R. Co., or between the Delaware Grangers and the New York, Philadelphia, and Norfolk R. R. This attempt at a forcible division of profits is of the very essence of communism.

The Commission should have comprehended the business principles that where trade or production is not held back by charges for carriage—where there are many avenues for such trade or production to reach the markets and where such avenues of transportation are competitive—such charges are not exorbitant, unfair, or excessive; and more than this, as in the present instance where there is and has been for several years a pressure on the market of more coal than it will accept, that these very transporters to save their clients' and their own property have had to discourage the undue production of coal.

These facts more than destroy all the force of the labored and inconsequent argument of the Commission, though they do not lessen the injury done to the "public interests" by their decision. The simple fact of the possibility of such a decision has inflicted a serious blow on railroad property.

The reader of the report who follows up the analyses of figures by which the Commission arrived at its results will be impressed with the *non sequitur* of all their reasoning, and by the fact that their conclusion is not logical, but is a mere guess—an approximation; and he will further learn that the whole argument can be summed up in a few words, viz.: Because at one time, some years ago, the Lehigh Valley R. R. Co. made a certain charge for carriage of coal to New York Bay, and a certain charge for transportation of pig-iron, and a certain rate of dividend, therefore, on the 20th

of April of the year 1891, they must return to that charge, entirely ignoring the peculiar conditions of the money market in 1886 and 1887, of the trade of the country, of the demand for iron and steel, the demand for coal, the prospect for larger profits and cheaper money, the cost of supplies, the wages of labor, the profit derived from carrying passengers and other freight, the profits derived from carrying the coal of Messrs. Cox & Co., and the profits from other sources, and the competition from other railroads, etc.

Now it is confidently left to the good sense of the American people and to their love of justice to condemn such a decision—indeed, all their decisions where they attempt to say how much of the profits arising from the sale of the products of the soil, the forest, the mine, or of manufacture shall go to the producer, the miner, the manufacturer, and how much to the transporting company—to brand all such decisions as unjust and an illegal confiscation of property and in violation of the fundamental principles of the Constitution of our country.

To trifle with properties involving the investment of many hundred millions of dollars—for their decision affects the whole anthracite carrying interests—by a guess, a lumped, jumped-at conclusion, is something abhorrent to every principle of right as between citizens of this State and country.

DEFENCE OF THE COMMISSION.

But the Commissioners will answer that the law imposes this duty on them, and that they are not responsible after using their best judgment. This would be bad reasoning. The Commission should have discovered long ago that the law could not be enforced with justice to the people, that much of it was impracticable, and that it assumed knowledge and ability that could not be gained or found. They should have reported these facts to Congress and declined to exercise their powers under the law. Such a presentation of facts would have had its influence. At all events the responsibility would have been thrown back on Congress. Such a course would have been far wiser than to attempt the execution of a law by in many cases opposing decisions, by fixing rates to

take effect more than two years after the complaint was entered, by evading decisions, and by the vain attempt to harmonize the law with the business of the country and the intent of Congress in its enactment.

A comparison of the reasoning of the Commission in the two cases herein discussed with the proper principles as hereinbefore established (1) of the distribution of the proceeds of transportation (2) with the necessary polity in railroad management to make them profitable, (3) with the inability of any body of men to either fix with anything like judicial accuracy the total cost of transportation on a railway or the cost of the carrying of classes, whether of passengers or freight, and, much more, to distinguish between different articles of freight, (4) that the laws of trade furnish the only safe rule for regulating rates of transportation—such a comparison will show that the Commission have erred, First. In recognizing a royalty as part of the cost to the producers which must be met by the rates of the transporter. Second. In interfering by their decisions with the public right that people and places enjoy in the transportation of so much of their productions as becomes inter-state commerce. Third. In admitting as elements in fixing rates (1) the rates charged by the Lehigh Valley Company on other freight, and (2) the dividends and profits of the company in other years. Fourth. In determining a rate to take effect some two years after the question was raised without reference to present conditions. Fifth. In the inability of the Commission to ascertain so nearly the actual cost and value of the transportation as to prevent by any error doing material injustice to either of the parties. Sixth. In the failure of the Commission to recognize the experience of mankind and of all ages as it is embodied in the laws of trade. Seventh. In the conclusion of the Commission not being a proper inference from the statistics in their report and thus evidencing that such conclusion was lowered to the fortunate or unfortunate ability of the Commission to make a happy guess. Eighth. In the assumption of the power to divide profits between producers of freight and producers of transportation, an error of the broadest character, as such assumption strikes at the root of all property and of the social status. Ninth. In their failure to report to Congress the difficulties in the

way of carrying into effect the Inter-State Commerce Act, with any regard to justice or the rights of the people and of the States, and to recommend changes in the line of their experience and observation.

UNREST OF THE FINANCIAL WORLD.

The financial world is uneasy at the depreciation of values of railway shares and securities, at the possible losses to be met by owners of Western mortgages, and at the little business doing in the stock exchanges of the country. The question is asked why such a state of things exists, when the country is in a good financial condition, with the prospect of large crops and a fair demand for manufactured goods and wares of all kinds. A very little examination will discover some reasons for such depression in the financial world, apart from how far our prices are influenced by the unhappy financial condition of the leading countries of Europe and South America. The present status is to be attributed in part (1) to the passage of the Inter-State Commerce Act, followed by the construction put on it by the Commissioners, and to the character of the decisions made under it; (2) to the various laws passed by different State legislatures directed to the same end; (3) to an almost organized war in the West and Southwest on capital or on interests in which large amounts of money have been invested by others than their own people; to the murmurings of the passage of stay and other laws to prevent the collection of principal and interest on mortgages, etc.

Capital is with good reason becoming uneasy at the prospect. It sees a practical and possible confiscation of values at the will of three out of five men; it sees that the place held by the present Commissioners under the Inter-State Commerce Act may shortly be held by others, who will not have the apology for their unwise decisions that they were the results of their honest convictions. Capital sees in the action of legislatures and of railroad commissioners, in the demand for cheap money, or money at a low rate of interest, a willingness to destroy the value of money invested, within their limits, under the vain idea that they will thereby

get the use of the machines created by such money at a low rate or without paying any interest or profit thereon. That this passion is permeating all parts of the country is to be seen in the acts of legislatures levying taxes on invested money called capital. It is simply a principle of communism, taking the property of other people without giving an equivalent, and the popularity of the principle is evidenced by the number of stalwart politicians who uphold its theories. The result of these tendencies is to cause those who have invested their money in railways, stocks and securities, in mortgages and other improvements to make an earnest endeavor to get out of the fix they are in; and for this purpose they are willing to dispose of their holdings at low figures; and those people who have money in hand are unwilling to invest at all, except at such low prices that they can stand unfavorable legislation. These are the chief reasons for the stagnation of the stock exchanges of the country. It is due to a loss of confidence in our legislators, and in the honesty of the people. It would seem strange that these communists (for they are nothing else) do not see that the result will be disastrous to their interests, because the development of a new country depends largely on the use of borrowed money, and this must come from the money centres; that capital will withdraw itself from investment in mortgages unless it can be better secured at higher rates; that capitalists will not be willing to aid the farmer, the planter, the miller, the merchant, the manufacturer and the builder, by reason of the unreliability of the security they may offer. Thriving cities and towns in the West and Southwest have already found they could not borrow money from capital to build water and gas works, to improve their streets and ways, because of this prevailing communistic feeling. The people should understand that while railways which are built will remain to be operated, they cannot be improved or extended or prepared to do their best work by reason of their inability to borrow money at a low rate of interest. The result to the people will be fewer facilities and higher charges for services. The people should further understand that capital represents the accumulation of small earnings from all classes of people and when they destroy values, that they are not, as they suppose, striking at the holders of large amounts of money, the "many"



millionaires," but at the support of aged men and women, of the widow and orphan, of children, and those who are incapable of making money, or have retired from business. The "many millionaires" look out for themselves and the classes described must bear the brunt of the losses. The people should also learn that the way to get cheap money or money at a low rate of interest is to offer capital the highest security. As a step in this direction the Inter-State Commerce Act must be greatly changed, and all the dangerous and destructive elements taken out of it. Legislators must pass conservative, not ruinous laws. Public opinion must undergo a radical change and politicians must learn that the way to place, is to act in the true interest of the people.

FINALLY.

It is to be hoped that this presentation of the working and some of the results of the Inter-State Commerce Act will cause the people and the members of our new Congress to think over the question carefully, and that public opinion will unite with Congress in expunging from such law its impracticable and dangerous provisions and developing its usefulness by the continuous accumulation of facts and statistics of the movement of the internal commerce of the country, by giving legal force to agreements between the transporting companies, and by placing their property under the protection of the General Government. With these changes the State Governments should revise their general railroad laws as hereinbefore suggested, and the two powers, the General and State, could by harmonizing their laws, establish principles for the construction and government of railways, canals, and all transporting companies, that would benefit the proprietors and people of the country, make investment in such companies more safe, and thereby reduce the cost of transportation, and secure to the people fair and equal rates for the transportation of their persons and their property.

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